



Jody D. Selby appeals the trial court's denial of his motion to correct erroneous sentence. Selby raises three issues, which we consolidate and restate as whether the trial court abused its discretion by denying Selby's motion to correct erroneous sentence. We affirm.

The relevant facts follow. In 2004, Selby pleaded guilty to fraud on a financial institution as a class C felony and theft as a class D felony. The trial court sentenced him to eight years for fraud and three years for theft and ordered the sentences to be served concurrently. Additionally, the trial court ordered that Selby "receive credit for two hundred and fifty-five (255) days previously served, but orders that he receive no good time credit." Appellant's Appendix at 78.

In June 2005, Selby filed a motion to correct erroneous sentence, arguing that the trial court did not have the authority to deny him good time credit. The trial court denied Selby's motion to correct erroneous sentence. Selby then filed a motion to correct error, which was deemed denied, and Selby did not initiate a timely appeal. In March 2007, Selby filed a petition for jail time credit, seeking 255 days of "jail time credit," and the trial court denied Selby's petition. Id. at 90. Selby did not initiate an appeal.

In October 2007, Selby filed another motion to correct erroneous sentence. Selby argued that the trial court erred by denying him all good time credit where the Sheriff had deprived him of only 232 days of good time credit. The trial court denied Selby's motion, and Selby filed a timely notice of appeal. Then, on November 16, 2007, Selby filed an amended motion to correct erroneous sentence, arguing that the trial court did not

have authority to deny him good time credit. Although the trial court had not ruled on the amended motion, Selby filed another notice of appeal on December 19, 2007.

The issue is whether the trial court abused its discretion by denying Selby's motion to correct erroneous sentence. While we "will defer to the trial court's factual finding, reviewing only for abuse of discretion, we will review a trial court's legal conclusions under a *de novo* standard of review." Strowmatt v. State, 779 N.E.2d 971, 975 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

On appeal, Selby argues that the trial court abused its discretion by denying his motion to correct erroneous sentence because: (1) the trial court deprived him of 255 days of good time credit while the Sheriff had deprived him of only 232 days of good time credit; (2) the trial court did not have authority to deny him class I credit time; and (3) the trial court was required to consider if procedural safeguards had been met during the Sheriff's deprivation of credit time.

First, Selby's claims are barred by res judicata. "The doctrine of res judicata prevents the repetitious litigation of that which is essentially the same dispute." Ben-Yisrayl v. State, 738 N.E.2d 253, 258 (Ind. 2000), reh'g denied, cert. denied, 534 U.S. 1164, 122 S. Ct. 1178 (2002). A defendant "cannot escape the effect of claim preclusion merely by using different language to phrase an issue and define an alleged error." Id. Selby has repeatedly argued that he is entitled to pre-sentence good time credit, and the trial court has repeatedly denied Selby's motions. "That the trial court's judgment was

not appealed is of no moment.” Annes v. State, 789 N.E.2d 953, 954 (Ind. 2003). To the extent that Selby is again claiming that he is entitled to pre-sentence good time credit, Selby’s claims are barred by res judicata.

Moreover, Selby’s claims are not properly presented in a motion to correct erroneous sentence. In Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004), the Indiana Supreme Court addressed the difference between a motion to correct erroneous sentence and a petition for post-conviction relief. The court held that a motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the judgment. Robinson, 805 N.E.2d at 787. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence. Id. Sentencing claims that are not facially apparent “may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” Id.

The Sheriff’s report regarding the deprivation of Selby’s credit time and whether any procedural safeguards were satisfied are not part of the trial court’s sentencing judgment. These arguments require consideration of matters in the record outside the face of the judgment. Thus, Selby’s arguments were not properly presented by way of a motion to correct erroneous sentence.

To the extent Selby’s argument that the trial court lacked authority to deny him pre-sentence class I credit time is properly presented in a motion to correct erroneous sentence, we note that Selby relies upon Robinson v. State, 789 N.E.2d 965, 967 (Ind. Ct. App. 2003), for the proposition that the denial of credit time rests with the Indiana Department of Correction. However, that decision was vacated by the Indiana Supreme

Court in Robinson, 805 N.E.2d at 783, in which the Indiana Supreme Court held that the trial court had the authority to determine a prisoner's pre-sentence credit time class. 805 N.E.2d at 792. Thus, the trial court had the authority to identify Selby's pre-sentence credit time classification in the sentencing judgment and to deprive Selby of good time credit.

We conclude that the trial court did not abuse its discretion by denying Selby's motion to correct erroneous sentence. See, e.g., Jackson v. State, 806 N.E.2d 773, 774 (Ind. 2004) (holding that the trial court properly denied the defendant's motion to correct erroneous sentence because a motion to correct sentence is available only to correct sentencing errors clear from the face of the judgment and is not available to challenge entries or omissions in an abstract of judgment).

For the foregoing reasons, we affirm the trial court's denial of Selby's motion to correct erroneous sentence.

Affirmed.

NAJAM, J. and DARDEN, J. concur